

REMARKS

This application pertains to novel emulsifier-free finely disperse systems of the water-in-oil type, preferably as cosmetic or dermatological preparations. The systems comprise modified phyllosilicates having amphiphilic character (page 9, 2nd full paragraph) which stabilize the emulsions (page 9, 5th full paragraph) and do not need any emulsifiers, although emulsifiers can be present in an amount of 0.5% by weight at most (page 9, 1st, 2nd and 3rd full paragraphs).

Claims 1-3, 7-14 and 18-20 are pending, claims 16 and 17 being cancelled by the amendment.

Claims 1, 3, 7-14 and 16-20 stand rejected under 35 U.S.C. 102(e) as anticipated by Lanzendorfer et al (U.S. 5,952,373).

Lanzendorfer's compositions are not emulsifier free (as required by Applicants' Claim 2) and need far more than the 0.5% maximum allowed by Applicants' claim 1. Nowhere does Lanzendorfer teach or suggest any way of stabilizing an emulsion without emulsifiers, and all of his Examples require at least 3% by weight of an emulsifier. See, for example, col. 18, line 65 – col 19, line 4; col. 18, line 11; col. 19, lines 48-53; col. 26, examples 11–15.

Moreover, Lanzendorfer neither teaches nor suggests anything at all about modified phyllosilicates.

Lanzendorfer therefore cannot possibly anticipate Applicants' claims. In addition, since there is no suggestion of any way to make an emulsion without an emulsifier, Lanzendorfer cannot be seen as suggesting Applicants' claims. The rejection of Claims 1, 3, 7-14 and 16-20 under 35 U.S.C. 102(e) as anticipated by Lanzendorfer et al (U.S. 5,952,373) should accordingly be withdrawn.

Claims 1-5 and 7-12 stand rejected under 35 U.S.C. 103(a) as obvious over Gers-Barlag et al. (WO 98/42300) in view of Msika et al. (US 5,939,054) and Plaschke et al (US 6,409,996).

In discussing Gers-Barlag, the Examiner refers to specific columns and lines. However, the WO reference does not have columns and lines, just pages and lines. Applicants believe that the Examiner is actually referring to U.S. 6,440,399, which is a 371 of the WO reference; but this should be clarified for the record.

The Gers-Barlag reference requires zinc oxide or titanium dioxide to stabilize the emulsions (col. 4, lines 33-40) and these are not modified in the sense that the word "modified" is used in Applicants' specification (see the discussion beginning at page 20, under the heading "Modified Phyllosilicates").

Msika, contrary to the Examiner's assertions, does not teach or suggest an emulsifier-free emulsion. The language referred to by the Examiner at col. 2, lines 1-9

does not concern an emulsion; just a dispersion. When Msika's compositions are produced in the form of an emulsion, emulsifiers are required (col. 4, lines 32-43; col. 5, line 19). Note that the Example at the bottom of col. 8 uses 10 g of emulsifier Dow Coming 3225C; which amounts to approximately 5% of the total formulation.

Nothing can be found in Msika about the use of phyllosilicates to stabilize an emulsion.

The Bentonite mentioned by the Examiner as being discussed at col. 3, lines 49-55, is used as a gelling derivative to optimize the stability of the product, but this language does not refer to an emulsion. The language mentioned by the Examiner at col. 4, lines 24-30 likewise does not refer to an emulsion. The preparation disclosed at col. 9, line 55 to col 10, line 14, is likewise not emulsifier free. Note that Hosteracin W/O, which is believed to be an emulsion which comprises emulsifiers, appears to be used as a base for the disclosed composition.

Plaschke just teaches compositions comprising flavanoids, and a way of obtaining the flavanoids; but has nothing to do with emulsions.

It is therefore not possible to see how any combination of these reference could possibly lead to Applicants' novel emulsions which are stabilized by modified phyllosilicates and comprise either no more than 0.5 % by weight of emulsifiers (claim 1) or none at all (claim 2). The rejection of Claims 1-5 and 7-12 under 35 U.S.C. 103(a)

as obvious over Gers-Barlag et al. (WO 98/42300) in view of Msika et al. (US 5,939,054) and Plaschke et al. (US 6,409,996) should accordingly now be withdrawn.

Claims 13-20 stand rejected under 35 U.S.C. 103(a) as obvious over Gers-Barlag et al. (WO 98/42300), Msika et al. (US 5,939,054) and Plaschke et al. (US 6,409,996) as applied above, and further in view of Suzuki et al. (US 5,145,781). The Examiner turns to Suzuki for alpha-glycosyl rutin. The differences between Applicants' invention and anything that might be derived from the Gers-Barlag, Msika and Plaschke combination of references have been discussed above. Alpha-glycosyl rutin cannot overcome any of those differences, and the addition of the Suzuki reference does not bring the Gers-Barlag, Msika and Plaschke combination of references any closer to Applicants' invention. The rejection of Claims 13-20 under 35 U.S.C. 103(a) as obvious over Gers-Barlag et al. (WO 98/42300), Msika et al. (US 5,939,054) and Plaschke et al. (US 6,409,996) as applied above, and further in view of Suzuki et al. (US 5,145,781) should accordingly be withdrawn.

In view of the present amendments and remarks it is believed that claims 1-3, 7-14 and 18-20 are now in condition for allowance. Reconsideration of said claims by the Examiner is respectfully requested and the allowance thereof is courteously solicited. Should the Examiner not deem the present amendment and remarks to place the instant claims in condition for allowance, it is respectfully requested that this Amendment Under Rule 116 be entered for the purpose of placing the prosecution record in better condition for appeal.


CONDITIONAL PETITION FOR EXTENSION OF TIME

If any extension of time for this response is required, Applicants request that this be considered a petition therefor. Please charge the required petition fee to Deposit Account No. 14-1263.

ADDITIONAL FEE

Please charge any insufficiency of fee or credit any excess to Deposit Account No. 14-1263.

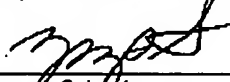
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